



DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE

WASHINGTON, D.C.

APR 20 1988

HQ 109464

VES-3-17 CO:R:P:C 109464 PH

CATEGORY: Carriers

Stuart R. Breidbart, Esq.
Sea-Land Service, Inc.
10 Parsonage Road
Post Office Box 800
Iselin, New Jersey 08830

RE: Coastwise Transportation of Cranes to be Used in Loading and Discharging Vessels - Sixth Proviso to 46 U.S.C. App. 883

Dear Mr. Breidbart:

This in response to your letter of April 13, 1988, in which you request a ruling on the applicability of the coastwise laws to the transportation in a Dutch-flag vessel of container handling cranes from Long Beach, California, to Elizabeth, New Jersey.

FACTS:

Your company owns two shore-side container handling cranes located in a California port. These cranes are specially designed to load and discharge marine cargo containers from cellular container ships and are useful for no other purpose.

You state that your company needs to relocate the cranes to its port facility in New Jersey to handle an increased volume of cargo which will move through that facility. This relocation would be effected by the removal of the cranes from their present location, the loading of them onto a special purpose chartered "heavy lift" vessel, and the transportation of the cranes on that vessel to the New Jersey facility. There the cranes would be discharged and erected next to other cranes now in service at the facility. All of the cranes will be used to load and discharge cargo of your company moving in the trades between the United States and Europe, Asia, and Central America. In addition, you state, this facility is used to load and discharge your company's vessels operating between New Jersey and Puerto Rico, although this cargo represents less than 10 percent of the cargo being loaded and discharged at the New Jersey facility.

You state that the cranes at your company's New Jersey facility are used to stevedore the vessels of your company and those of its terminal service customers. Your company is the sole operator of the cranes now at the facility and will continue to be the sole operator of the cranes when the cranes from California are erected at the New Jersey facility.

The two cranes will take up the entire capacity of, and be the only cargo on the carrying vessel. The vessel will have to ballast down to clear the Bayonne Bridge in New Jersey. You state that there is no United States-flag or other vessel which can pass under the bridge with the cranes on board.

The vessel used to transport the cranes is to be a Dutch-flag and owned heavy lift vessel. The vessel owner will voyage charter the vessel to your company and your company will be responsible for all land-side engineering preparation in connection with the loading of the cranes in California. Your company will also be responsible for routing the vessel in its transit to the New Jersey facility and will oversee the discharge of the cranes.

ISSUE:

May cranes used to load and unload the cargo of the owner of the cranes moving primarily in foreign trade be transported from California to New Jersey in a Dutch-flag vessel which is voyage chartered by the owner of the cranes from the vessel owner?

LAW AND ANALYSIS:

Title 46, United States Code Appendix section 883 (46 U.S.C. App. 883), often called the Jones Act, provides, in part, that no merchandise shall be transported between points in the United States embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation, in any vessel other than a vessel built in and documented under the laws of the United States and owned by persons who are citizens of the United States. The Act of September 21, 1965 (Public Law 89-194, 79 Stat. 823), added the so-called sixth proviso to section 883 and the Act of August 11, 1968 (Public Law 90-474, 82 Stat. 700), amended this proviso. Under the sixth proviso:

... Upon such terms and conditions as the Secretary of the Treasury by regulation may prescribe, and, if the transporting vessel is of foreign registry, upon a finding by the Secretary of the Treasury, pursuant to information obtained and furnished by the Secretary of State, that the government of the nation of registry

extends reciprocal privileges to vessels of the United States, this section shall not apply to the transportation by vessels of the United States not qualified to engage in the coastwise trade, or by vessels of foreign registry, of (a) empty cargo vans, empty lift vans, and empty shipping tanks, (b) equipment for use with cargo vans, lift vans, or shipping tanks, (c) empty barges specifically designed for carriage aboard a vessel and equipment, excluding propulsion equipment, for use with such barges, and (d) any empty instruments for international traffic exempted from application of the customs laws by the Secretary of the Treasury pursuant to the provisions of section 1322(a) of Title 19, if the articles described in clauses (a) through (d) are owned or leased by the owner or operator of the transporting vessel and are transported for his use in handling his cargo in foreign trade; and (e) stevedoring equipment and material, if such equipment and material is owned or leased by the owner or operator of the transporting vessel, or is owned or leased by the stevedoring company contracting for the lading or unlading of that vessel, and is transported without charge for use in the handling of cargo in foreign trade.

The regulations promulgated under the authority of this proviso are in section 4.93, Customs Regulations, which lists the nations the vessels of which are entitled to the privileges provided for by the proviso. The Netherlands is listed as having been found to extend reciprocal privileges in respect to the articles listed under (a) and (b) through (e) of the proviso. We have ruled that cranes used in the loading and unloading of cargo in foreign trade may qualify for the exemption for stevedoring equipment and material in the sixth proviso to 46 U.S.C. App. 883.

In order to qualify for the exemption for stevedoring equipment and material in the sixth proviso, the cranes under consideration, to be transported from California to New Jersey in a Dutch-flag vessel, must be:

- (1) (a) owned or leased by the owner or operator of the transporting vessel; or
(b) owned or leased by the stevedoring company contracting for the lading or unlading of that vessel; and
- (2) ... transported without charge for use in the handling of cargo in foreign trade.

We have previously considered the meaning of the words "owner or operator" in the sixth proviso when applying that proviso to the transportation of articles listed in the proviso other than stevedoring equipment and material (see rulings dated July 18, 1977, and August 12, 1983, file numbers 102288 and 106292, respectively, copies enclosed). After examining the legislative history to the sixth proviso and judicial and other authorities, we have determined that, although a bareboat or demise charterer may be considered an "owner or operator" of a transporting vessel, a time or "slot" charterer would not be so considered. We see no reason why this interpretation of the word "owner or operator" should not also be used with regard to that part of the sixth proviso concerning stevedoring equipment and material.

The charter party under consideration, which you describe as a "voyage" charter, does not appear to have the characteristics of a bareboat or demise charter, in which complete control and management of a vessel are transferred to the charterer for the duration of the charter (see the August 12, 1983, ruling referred to above). The charter arrangement appears to be in the nature of a time charter. Assuming that this is so, your company would not be considered the "owner or operator" of the transporting vessel and the transportation of the cranes under consideration would not be exempt from the prohibitions of 46 U.S.C. App. 883 under the first part of the stevedoring equipment and material provision of the sixth proviso.

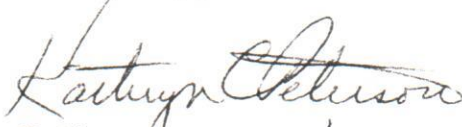
The transportation of the cranes under consideration also would not be exempt from the prohibitions of 46 U.S.C. App. 883 under the second part of the stevedoring equipment and material provision of the sixth proviso (i.e., exempting the transportation of stevedoring equipment and material owned or leased by the stevedoring company contracting for the lading or unlading of the vessel). This is so because, even if we were to consider your company to be the stevedoring company contracting for the lading or unlading of the vessel, the cranes must also be transported without charge. We assume that there is a charge for the transportation of the cranes.

HOLDING:

A Dutch-flag vessel would be prohibited by 46 U.S.C. App. 883 from transporting cranes used to load and unload the cargo of the owner of the cranes moving primarily in foreign trade when the vessel is voyage chartered by the owner of the cranes from the vessel owner, notwithstanding the sixth proviso to section 883,

because the owner of the cranes would not be considered the "owner or operator," within the meaning of that proviso, of the Dutch-flag vessel and the cranes would not be transported without charge.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kathryn C. Peterson".

Kathryn C. Peterson
Chief
Carrier Rulings Branch

Enclosures